IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO.816 OF 1989
(By State against acquittal)

The State of Maharashtra ....Appellant/Orig.Complt.
V/s
1.Ratna Kakad Chimada.
2. Khursan Kakad Chimada.
3. Barkya Babalu Chimada.
4. Vanashya Babaku Chimada. ....Respondents/Orig.Accd. Nos.1 to 4.

Shri D.S.Mhaispurkar, A.P.P. for the Appellant.

Shri K.K.Malpathak with Shri Vijay M. Balinjkar, Advocate for Respondents

CORAM: SMT.RANJANA DESAI,&
ABHAY S.OKA,JJ.

Dated 21st December,2004.

JUDGEMENT (Per Abhay S.Oka,J.)

1. By this appeal against acquittal, the Appellant-State of Maharashtra has taken exception to the Judgment and Order dated 10th August,1989 passed by the Learned IIIrd Additional Sessions Judge, Thane. By the said Judgment and Order, the Respondents-accused were acquitted of the offences punishable u/s 302 r/w 34, Section 336 r/w 34 and Section 427 r/w 34 of the Indian Penal Code (hereinafter referred to as 'I.P.C.'")

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2. The case of the Appellants is that Complainant Janya was in his house on 15th June,1986. The Complainant's father was also present in the courtyard of the house. In the evening on that day, Respondents/Accused came to the Courtyard of the house of the Complainant. The accused were armed with sticks and stones. The accused no.1 fell down the father of the Complainant on the ground and he sat on his chest. The Respondent nos. 1 and 2 assaulted the Complainant's father with stones in their hands. The assault was made on the chest and stomach. The Complainant and others started shouting for help. Therefore, the accused ran away. While running away, they pelted stones towards the house of one Dharma and caused damage to it. He also pelted stones towards the Complainant's house and caused damage to the said house. The Complainant's father was taken to dispensary at Jawhar from where he was shifted to Nashik. Complainant's father died at Nashik.

3. The Prosecution examined 6 witnesses. P.W.1 is the Complainant-Janya. P.W.2 is one Dharma Sonya Kharpade who claims to be an eyewitness to the offence. P.W.3 is Devlalji Kharpade also claims to be an eyewitness. P.W.4 Dhavji Kharpade is another son of the deceased

and he also claims to be an eyewitness. P.W.5 is P.S.I. of Jawhar Police Station who is the Investigating Officer. P.W.6 Doctor Waman Palve, is Medical Officer who conducted Postmortem on the body of the deceased.

4. The Learned Trial Judge has disbelieved the evidence of the eyewitnesses. Learned Trial Judge also held that the eyewitnesses have not deposed anything against Respondent nos.3 and 4.

5. Learned Assistant Public Prosecutor submitted that there was no reason for the Learned Trial Judge to discard the evidence of eyewitnesses. He submitted that the deceased was not at all in a position to speak and therefore merely because the deceased did not tell the names of the accused, there was no reason to pass the order of acquittal. He submitted that all the eyewitnesses have deposed against Respondent No.1 and 2 and the said depositions clearly establish the guilt of the Respondent no.1 and 2 beyond reasonable doubt.

6. The Learned Counsel appearing for Respondents submitted that the findings recorded by Learned Trial Judge are based on evidence on record. He submitted that merely because another view was possible to be taken on the basis of evidence on record is no ground to interfere in an Appeal against acquittal. He submitted that there were serious infirmities in

the prosecution case and therefore there was no merit in the Appeal.

7. Before we consider the rival submissions, it will be necessary to refer to the evidence on record. P.W.1-Janya who is the son of the deceased stated that the accused came to their house. Accused no.1/Respondent No.1 was having a stone in one hand and a stick in another hand. The other accused were armed with stones. He stated that all of them assaulted the deceased on chest and other parts. P.W.1 also supported the prosecution case regarding pelting of stones by the accused on the house of Dharma as well as his own house. In the cross-examination, he admitted that he alongwith other persons who were present at the time of incident did not make any attempt to rescue his father. In the cross-examination, P.W.1 stated that he had made report against all the accused and he was not aware as to why names of Respondent nos.3 and 4 were not recorded therein.P.W.2- Dharma stated that he saw the incident from the courtyard of his house. He stated that the accused nos 1 and 2 assaulted the deceased who was his Uncle by using stones in their hands and other two accused were simply standing there. In the cross-examination, he admitted that he made no efforts to go to the spot and help his Uncle. P.W.3 -Devlalji stated that he saw from his house the Respondent nos.1 and 2 assaulting the deceased by stones. He stated that

he saw that Respondents nos 3 and 4 were simply standing. P.W.4-Dhavji is the brother of the Complainant. He stated that Respondent nos.1 and 2 assaulted his father with sticks and 2 others assaulted his father with stones. He stated that his mother and sister tried to rescue his father. In the cross-examination, he stated that all the accused were assaulting his father at one and the same time. P.W.5 is the Investigating Officer. In his cross-examination he produced extracts dated 16th June,1986 from Station Diary. P.W.6- Dr. Waman performed postmortem on the body of the deceased. He opined that injuries on the body of the deceased were caused by hard objects such as stones and sticks.

8. P.W.1 Janya and P.W.4 Dhavji came out with the version that all the accused assaulted their father. P.W.1 stated that only Respondent No.1 was having stone and stick in his hands and others were armed only with stones. P.W.4-Dhavji stated that Respondent No.1 and 2 assaulted his father with sticks and other two assaulted his father with stones. P.W.4 stated that his mother and sister tried to rescue his father. However said fact is not deposed by P.W.1 who was in the house alongwith the father. P.W.2 and 3 have however deposed that Respondent 1 and 2 assaulted the deceased with stones Both of them have stated that Respondent No.3 and 4 did not

assault the deceased. Both of them have not stated that Respondent Nos 1 and 2 assaulted the deceased with sticks.

9. Apart from such contradictory statements made by the witnesses, it is pertinent to note that both P.W.1 and P.W.4 did not make any attempt to save their father. The extract of the Station Diary produced by the Investigating Officer only records that persons from Nagar Haveli assaulted the deceased with stones. P.W.5 denied in cross-examination that the deceased came to the police station. However, the entries in the station diary are to the contrary. Considering all these aspects, Learned Sessions Judge has disbelieved the case of the prosecution. After having perused the evidence on record, we find no substance in the submissions of learned Public Prosecutor.

10. There is no merit in the appeal and the same is dismissed.

(SMT.RANJANA DESAI, J.)

(ABHAY S.OKA, J.)